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268 NLRB No. 159

D--1258
Monroeville, PA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GATEWAY PRESS, INC.

and

Case #--CA--14863

GRAPHIC COMMUNICATIONS INTERNATIONAL
UNION, LOCAL 24--L, AFL--CIO¹

DECISION AND ORDER

Upon a charge filed by the Union 4 September 1981, the General Counsel of the National Labor Relations Board issued a complaint 3 June 1983, as amended 28 September 1983, against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The amended complaint alleges that on 18 June 1981, following Board elections in Cases 6--RC--8892 and 6--RC--8906, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the units found appropriate. (Official notice is taken of the "record" in the representation proceedings as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The amended

¹ The Graphic Arts International Union, the Charging Party in this case, and the International Printing and Graphic Communications Union merged, effective 1 July 1983, to form the Graphic Communications International Union.

complaint further alleges that since on or about 18 June 1981 the Company has refused to bargain with the Union. On 29 September 1983 the Company filed its answer to the amended complaint admitting in part and denying in part the allegations in the amended complaint.

On 6 October 1983 the General Counsel filed a Motion for Summary Judgment. On 12 October 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response, and the Union filed a brief in support of the motion. On 14 November 1983 the General Counsel filed an amendment to the Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment, as Amended

The record, including the record in Cases 6--RC--8892 and 6--RC--8906, reveals that elections were held 15 January 1981 pursuant to stipulated election agreements. The tally of ballots in Case 6--RC--8892 shows that, of approximately 33 eligible voters, 14 cast ballots for and 8 against the Union. There were no challenged ballots. The tally of ballots in Case 6--RC--8906 shows that, of approximately 34 eligible voters, 25 cast valid ballots for and 6 against the Union. There were no challenged ballots. After conducting an investigation on the Company's objections in the aforementioned cases, the Regional Director for Region 6, on 26 February 1981, issued his reports recommending that the objections be overruled. The Company filed exceptions to the recommendations. On 18 June 1981 the Board adopted the recommendations in

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On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Pennsylvania corporation, is engaged in the nonretail printing of newspapers and lithography at its facility in Monroeville, Pennsylvania, where it annually purchases and receives goods and materials valued over \$50,000 from outside the Commonwealth of Pennsylvania. The Company annually receives gross revenues over \$50,000 from providing services to other employers in the Commonwealth of Pennsylvania who are themselves engaged in interstate commerce. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certifications

Following the elections held 15 January 1981 the Union was certified 18 June 1981 as the collective-bargaining representative of the employees in the following appropriate units:

A. Case 6--RC--8892

All full-time and regular part-time composing room employees including layout artists, typesetters, proof readers and paste up employees employed by Dardanell Enterprises, Inc. at its Monroeville, Pennsylvania facility, excluding all other employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

B. Case 6--RC--8906

All full-time and regular part-time inside circulation employees, inserting employees and mailing employees employed by Dardanell Enterprises, Inc. at its Monroeville, Pennsylvania facility,

representative of the employees in the stipulated units. 2
Both proceedings and certified the Union as the exclusive bargaining
agent pursuant to the certifications issued in Cases 6--RC--8892 and 6--
RC--8906. There is no evidence that the Company responded to these requests in
a timely manner. By letter dated 21 April 1983 the Company informed the
General Counsel it was declining to bargain with the Union because the
certifications in the representation proceedings assertedly were erroneous.
Its answer to the amended complaint, the Company contends the certifications
were erroneous because the conduct of the Union improperly interfered with the
elections.

It is well settled that in the absence of newly discovered and previously
unavailable evidence or special circumstances, a respondent in a proceeding
alleging a violation of Section 8(a)(5) is not entitled to relitigate issues
that were or could have been litigated in a prior representation proceeding.
See Pittsburgh Glass Co., v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f)
and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the
prior representation proceedings. The Company does not offer to adduce at a
hearing any newly discovered and previously unavailable evidence, nor does it
allege any special circumstances that would require the Board to reexamine the
decisions made in the representation proceedings. We therefore find that the
Company has not raised any issue that is properly litigable in this unfair
labor practice proceeding. Accordingly we grant the Motion for Summary
judgment, as amended.

2 Chairman Dotson and Member Hunter did not participate in the underlying
representation proceedings.

representative of the employees in the stipulated units. 2
Both proceedings and certified the Union as the exclusive bargaining
agent pursuant to the certifications issued in Cases 6--RC--8892 and 6--

Subsequent to the certification, the Company changed its name from Darданелл Интерпрісес, Inc., to Gateway Press, Inc., as alleged in the amended complaint.

(1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd., 328 F.2d 600 (5th Cir. 1962) bargaining in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 period of the certifications as beginning the date the Respondent begins to bargain agent for the period provided by law, we shall constitute the initial bargaining agent for the employees are accorded the services of their selected To ensure that the employees are accorded the services of their selected signed agreement.

Union, and, if an understanding is reached, to embody the understanding in a Act, we shall order it to cease and desist, to bargain on request with the having found that the Respondent has violated Section 8(a)(5) and (1) of the

Remedies

Act.

within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the units, the Company has engaged in unfair labor practices affecting commerce exclusive collective-bargaining representative of employees in the appropriate By refusing on and after 30 June 1981 to bargain with the Union as the

Conclusions of Law

(1) of the Act.

constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and since on or about that date the Company has refused. We find that this refusal Since 30 June 1981 the Union has requested the Company to bargain, and

B. Refusal To Bargain

the Act.

The Union continues to be the exclusive representative under Section 9(a) of

excluding all other employees, office clerical employees, guards, professionals and supervisors as defined in the Act.

1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Gateway Press, Inc., Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Refusing to bargain with Graphic Communications International Union, Local 24--L, AFL--CIO, as the exclusive bargaining representative of the employees in the bargaining units.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate units on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Unit A:

All full-time and regular part-time composing room employees including layout artists, typesetters, proof readers and paste up employees employed by Gateway Press, Inc. at its Monroeville, Pennsylvania facility, excluding all other employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

Unit B:

All full-time and regular part-time inside circulation employees, inserting employees and mailing employees employed by Gateway Press, Inc. at its Monroeville, Pennsylvania facility, excluding all other employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

4. If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD," shall read "POSTED PURSUANT TO A JUDGMENT OF THE NATIONAL LABOR RELATIONS BOARD."
UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

NATIONAL LABOR RELATIONS BOARD (SEAL)

Robert P. Hunter, Member

Don A. Zimmerman, Member

Donald L. Dotson, Chairman

Dated, Washington, D.C. 22 February 1984

of this Order what steps the Respondent has taken to comply.

(c) Notify the Regional Director in writing within 20 days from the date

defaced, or covered by any other material.

shall be taken by the Respondent to ensure that the notices are not altered, all places where notices to employees are customarily posted. Reasonable steps received and maintained for 60 consecutive days in conspicuous places including authorized representative, shall be posted by the Respondent immediately upon by the Regional Director for Region 6, after being signed by the Respondent's attached notice marked "Appendix." 4 Copies of the notice, on forms provided

(b) Post at its facility in Monroeville, Pennsylvania, copies of the

All full-time and regular part-time composing room employees including layout artists, typesetters, proof readers and paste up employees employed by Gateway Press, Inc. at its Monroeville, Pennsylvania facility, excluding all other employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

Unit A:

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining units:

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL NOT refuse to bargain with Graphic Communications International Union, Local 24-L, AFL-CIO, as the exclusive representative of the employees in the bargaining units.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

An Agency of the United States Government
National Labor Relations Board
Posted by Order of the

NOTICE TO EMPLOYEES

APPENDIX

Unit B:

All full-time and regular part-time inside circulation employees, inserting employees and mailing employees employed by Gateway Press, Inc. at its Monroeville, Pennsylvania facility, excluding all other employees, office clerical employees, guards, professional employees and supervisors as defined in the Act.

GATEWAY PRESS, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1501 William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222, Telephone 412--644--2969.